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9 Attorneys for Plaintiff  
10 ANTHONY E. HELD, Ph.D., P.E.

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17 Attorneys for Defendant  
18 M.Z. BERGER & COMPANY, INC.

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
20 FOR THE COUNTY OF ALAMEDA  
21 UNLIMITED CIVIL JURISDICTION

22 ANTHONY HELD, Ph.D., P.E.,

23 Plaintiff,

24 v.

25 M.Z. BERGER & COMPANY, INC.; and  
26 DOES 1 through 150, inclusive,

27 Defendants.

28 Case No. RG07351032

**STIPULATION AND [PROPOSED]  
ORDER RE: CONSENT JUDGMENT**

1       **1. INTRODUCTION**

2               **1.1 Anthony E. Held, Ph.D., P.E., and M.Z. Berger & Company, Inc.**

3               This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D.,  
4               P.E. (“Dr. Held” or “Plaintiff”) and M.Z. Berger & Company, Inc. (“M.Z. Berger” or “Defendant”),  
5               with Plaintiff and Defendant collectively referred to as the “Parties.”

6               **1.2 Plaintiff**

7               Dr. Held is an individual residing in the State of California who seeks to promote awareness  
8               of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous  
9               substances contained in consumer products.

10              **1.3 Defendant**

11              M.Z. Berger employs ten or more persons who are each a person in the course of doing  
12              business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California  
13              Health & Safety Code §25249.6 *et seq.* (Proposition 65).

14              **1.4 General Allegations**

15              Dr. Held alleges that M.Z. Berger has manufactured, distributed and/or sold children  
16              watches containing di(2-ethylhexyl)phthalate (hereinafter “DEHP”) without the requisite health  
17              hazard warnings. DEHP is known to cause birth defects and other reproductive harm and is listed  
18              by its chemical nomenclature pursuant to Proposition 65. DEHP shall be referred to hereinafter as  
19              the “Listed Chemical.”

20              **1.5 Product Description**

21              The products that are covered by this Consent Judgment are defined as follows: children  
22              watches containing the plasticizer phthalate DEHP, such as *Spongebob Squarepants LCD Watch*,  
23              #3235546, SBP265 (#0 49353 59307 4). All such children watches containing DEHP are referred  
24              to hereinafter as “Products” and singly as “Product.”

25              **1.6 Notice of Violation**

26              On August 2, 2007, Dr. Held served M.Z. Berger and various public enforcement agencies  
27              with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided M.Z. Berger  
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1 and public enforcers with notice of alleged violations of California Health & Safety Code §25249.6  
2 for failing to warn consumers that the Products that M.Z. Berger sold exposed users in California to  
3 the Listed Chemical. To the best of the parties' knowledge, no public enforcer has diligently  
4 prosecuted the allegations set forth in the Notice.

5 **1.7 Complaint**

6 On October 15, 2007, Dr. Held, acting in the interest of the general public in California,  
7 filed a complaint ("Complaint") in the Superior Court in and for the County of Alameda against  
8 M.Z. Berger and Does 1 through 150, alleging violations of California Health & Safety Code  
9 §25249.6 based on the alleged exposures to the Listed Chemical contained in the Products sold by  
10 M.Z. Berger.

11 **1.8 No Admission**

12 M.Z. Berger denies the material, factual, and legal allegations contained in Dr. Held's  
13 Notice and Complaint and maintains that all Products that they have sold and distributed in  
14 California have been and are in compliance with all laws. Nothing in this Consent Judgment shall  
15 be construed as an admission by M.Z. Berger of any fact, finding, issue of law, or violation of law,  
16 nor shall compliance with this Consent Judgment constitute or be construed as an admission by  
17 M.Z. Berger of any fact, finding, conclusion, issue of law, or violation of law, such being  
18 specifically denied by M.Z. Berger. However, this section shall not diminish or otherwise affect  
19 M.Z. Berger's obligations, responsibilities, and duties under this Consent Judgment.

20 **1.9 Consent to Jurisdiction**

21 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
22 jurisdiction over M.Z. Berger as to the allegations contained in the Complaint, that venue is proper  
23 in the County of Alameda and that this Court has jurisdiction to enter and enforce the provisions of  
24 this Consent Judgment.

25 **1.10 Effective Date**

26 For purposes of this Consent Judgment, the term "Effective Date" shall mean July 1, 2008.  
27  
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1       **2.     INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

2               **2.1     Product Warnings**

3               Commencing on the Effective Date, M.Z. Berger shall not sell, ship, or offer to be shipped  
4               for sale in California any Product unless such Product is sold or shipped with one of the clear and  
5               reasonable warnings set forth in subsections 2.1(a) and (b), are otherwise exempt pursuant to  
6               Section 2.2, or comply with the reformulation standards set forth in Section 2.3.

7               Each warning shall be prominently placed with such conspicuousness as compared with  
8               other words, statements, designs, or devices as to render it likely to be read and understood by an  
9               ordinary individual under customary conditions before purchase or use. Each warning shall be  
10              provided in a manner such that the consumer or user understands to which *specific* Product the  
11              warning applies, so as to minimize if not eliminate the chance that an overwarning situation will  
12              arise.

13                       **(a)     Retail Store Sales.**

14                               **(i)     Product Labeling.** M.Z. Berger may perform its warning obligation  
15                               by ensuring that a warning is affixed to the packaging, labeling, or directly on each Product sold in  
16                               retail outlets in California by M.Z. Berger or its agents, that states:

17                                       **WARNING:** This product contains DEHP, a phthalate  
18   chemical known to the State of California to  
19   cause birth defects and other reproductive  
20   harm.

21                                       **(ii)    Point-of-Sale Warnings.** M.Z. Berger may perform its warning  
22                                       obligations by providing warning signs in the form below to its customers in California with  
23                                       instructions to post the warnings in close proximity to the point of display of the Products.

24                                       **WARNING:** This product contains DEHP, a phthalate  
25   chemical known to the State of California to  
26   cause birth defects and other reproductive  
27   harm.

28               Where more than one Product is sold in proximity to other like items or to those that do not  
              require a warning (*e.g.*, Reformulated Products as defined in Section 2.3), the following statement

1 must be used:<sup>1</sup>

2 **WARNING:** The following products contain DEHP, a phthalate  
3 chemical known to the State of California to  
4 cause birth defects and other reproductive harm.

5 *[list products for which warning is required]*

6 **(b) Mail Order Catalog and Internet Sales.** In the event that M.Z. Berger sells  
7 Products via mail order catalog or internet to customers located in California after the Effective  
8 Date that are not Reformulated Products, M.Z. Berger shall satisfy its warning obligations for  
9 Products sold via mail order catalog or the Internet to California residents by providing a warning:  
10 (i) in the mail order catalog; or (ii) on the website. Warnings given in the mail order catalog or on  
11 the website shall identify the specific Product to which the warning applies as further specified in  
12 Sections 2.1(b)(i) and (ii).

13 **(i) Mail Order Catalog Warning.** Any warning provided in a mail  
14 order catalog must be in the same type size or larger than the Product description text within the  
15 catalog. The following warning shall be provided on the same page and in the same location as the  
16 display and/or description of the Product:

17 **WARNING:** This product contains DEHP, a phthalate  
18 chemical known to the State of California to  
19 cause birth defects and other reproductive  
20 harm.

21 Where it is impracticable to provide the warning on the same page and in the same location  
22 as the display and/or description of the Product, M.Z. Berger may utilize a designated symbol to  
23 cross reference the applicable warning and shall define the term “designated symbol” with the  
24 following language on the inside of the front cover of the catalog or on the same page as any order  
25 form for the Product(s):

26 <sup>1</sup>For purposes of the consent judgment, “sold in proximity” shall mean that the Product and another product are  
27 offered for sale or purchase close enough to each other that the consumer, under customary conditions of purchase,  
28 could not reasonably determine which of the two products is subject to the warning sign.

1                   **WARNING:** Certain products identified with this symbol  
2                                   ▼ and offered for sale in this catalog contain  
3                                   DEHP, a phthalate chemical known to the  
                                  State of California to cause birth defects and  
                                  other reproductive harm.

4                   The designated symbol must appear on the same page and in close proximity to the display  
5                   and/or description of the Product. On each page where the designated symbol appears, M.Z. Berger  
6                   must provide a header or footer directing the consumer to the warning language and definition of  
7                   the designated symbol.

8                   If M.Z. Berger elects to provide warnings in the mail order catalog, then the warnings must  
9                   be included in all catalogs offering to sell one or more Products printed after July 1, 2008.

10                   (ii)    **Internet Website Warning.** A warning may be given in conjunction  
11                   with the sale of the Product via the Internet, provided it appears either: (a) on the same web page  
12                   on which the Product is displayed; (b) on the same web page as the order form for the Product; (c)  
13                   on the same page as the price for any Product; or (d) on one or more web pages displayed to a  
14                   purchaser during the checkout process. The following warning statement shall be used and shall  
15                   appear in any of the above instances adjacent to or immediately following the display, description,  
16                   or price of the Product for which it is given in the same type size or larger than the Product  
17                   description text:

18                                   **WARNING:** This product contains DEHP, a phthalate  
19                                   chemical known to the State of California to  
                                  cause birth defects and other reproductive harm.

20                   Alternatively, the designated symbol may appear adjacent to or immediately following the  
21                   display, description, or price of the Product for which a warning is being given, provided that the  
22                   following warning statement also appears elsewhere on the same web page, as follows:

23                                   **WARNING:** Products identified on this page with the  
24                                   following symbol contain DEHP, a phthalate  
25                                   chemical known to the State of California to  
26                                   cause birth defects and other reproductive  
27                                   harm: ▼.

1           **2.2 Exceptions To Warning Requirements**

2           The warning requirements set forth in Section 2.1 shall not apply to:

- 3                   (i)     any Product shipped by M.Z. Berger to its customers in California prior to  
4                             the Effective Date; or  
5                   (ii)    Reformulated Products (as defined in Section 2.3 below).

6           **2.3 Reformulation Standards**

7           Reformulated Products are defined as those Products containing less than or equal to 1,000  
8           parts per million (“ppm”) of DEHP. The warnings required pursuant to Section 2.1 above shall not  
9           be required for Reformulated Products.

10          M.Z. Berger shall use Environmental Protection Agency (“EPA”) testing methodologies  
11          3580A and 8270C, or other comparable methodologies accepted by one or more federal and/or state  
12          agencies, including, if appropriate, ASTM D3421, to determine whether the respective levels have  
13          been exceeded in its Products.

14          **2.4 Reformulation Commitment**

15          M.Z. Berger hereby commits that one hundred percent (100%) of the Products that it offers  
16          for sale in California after September 30, 2008, shall qualify as Reformulated Products or shall  
17          otherwise be exempt from the warning requirements of Section 2.1.

18          **3. MONETARY PAYMENTS**

19               **3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)**

20          In settlement of all the claims referred to in this Consent Judgment, M.Z. Berger shall pay  
21          \$8,000 in civil penalties to be apportioned in accordance with California Health & Safety Code  
22          §25192, with 75% of these funds remitted to the State of California’s Office of Environmental  
23          Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Anthony  
24          Held as provided by California Health & Safety Code §25249.12(d). M.Z. Berger shall issue two  
25          separate checks for the penalty payment: (a) one check made payable to “Hirst & Chanler LLP in  
26          Trust For OEHHA” in the amount of \$6,000, representing 75% of the total penalty; and (b) one  
27          check to “Hirst & Chanler LLP in Trust for Anthony Held” in the amount of \$2,000, representing  
28

1 25% of the total penalty. Two separate 1099s shall be issued for the above payments: (a) OEHHA,  
2 P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Anthony Held, whose  
3 information shall be provided five calendar days before the payment is due.

4 Payment shall be delivered to Dr. Held's counsel within ten days of the Effective Date at the  
5 following address:

6 Hirst & Chanler LLP  
7 Attn: Proposition 65 Controller  
8 455 Capitol Mall, Suite 605  
9 Sacramento, CA 95814

10 The sums paid pursuant to this section 3.1 shall be held by Hirst & Chanler in the  
11 appropriate client trust account until entry of this Consent Judgment by the Court becomes final,  
12 including any potential appeals.

#### 13 **4. REIMBURSEMENT OF FEES AND COSTS**

##### 14 **4.1 Attorney Fees and Costs.**

15 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute  
16 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
17 this fee issue to be resolved after the material terms of the agreement had been settled. M.Z. Berger  
18 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had  
19 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to  
20 Dr. Held and his counsel under general contract principles and the private attorney general doctrine  
21 codified at California Code of Civil Procedure (CCP) §1021.5, for all work performed through the  
22 mutual execution of this agreement. M.Z. Berger shall reimburse Dr. Held and his counsel a total  
23 of \$23,000 for fees and costs incurred as a result of investigating, bringing this matter to M.Z.  
24 Berger's attention, and litigating and negotiating a settlement in the public interest. M.Z. Berger  
25 shall issue a separate 1099 for fees and costs (EIN: 20-3929984) and shall make the check payable  
26 to "Hirst & Chanler LLP" and shall be delivered within ten days of the Effective Date to the  
27 following address:  
28



1  
2 HIRST & CHANLER LLP  
3 Attn: Proposition 65 Controller  
4 455 Capitol Mall, Suite 605  
5 Sacramento, CA 95814

6 **4.2 Additional Attorney Fees and Costs in Seeking Judicial Approval.**

7 Pursuant to CCP §§1021 and 1021.5, the Parties agree that M.Z. Berger will reimburse Dr.  
8 Held and his counsel for their reasonable fees and costs incurred in seeking judicial approval of this  
9 settlement agreement in the trial court, in an amount not to exceed \$6,000. Such additional fees and  
10 costs, exclusive of fees and costs that may be incurred in the event of an appeal include, but are not  
11 limited to, drafting and filing of the motion to approve papers, fulfilling the reporting requirements  
12 referenced in Health & Safety Code §25249.7(f), responding to any third party objections,  
13 corresponding with opposing counsel and appearing before the Court related to the approval process.

14 Reimbursement of such additional fees and costs shall be due within ten days after receipt of  
15 a billing statement from Dr. Held (“Additional Fee Claim”). Payment of the Additional Fee Claim  
16 shall be made to “Hirst & Chanler LLP,” and the payment shall be delivered, at the following  
17 address:

18 HIRST & CHANLER LLP  
19 Attn: Proposition 65 Controller  
20 Capitol Mall Complex  
21 455 Capitol Mall, Suite 605  
22 Sacramento, CA 95814

23 M.Z. Berger has the right to object to such reimbursement and may submit the resolution of  
24 this issue to the American Arbitration Association (AAA) in Northern California to determine the  
25 reasonableness of the additional fees and costs sought, provided that an arbitration such notice of  
26 objection or decision to arbitrate is received by Dr. Held by the end of the ten calendar days. If an  
27 arbitration notice is not filed with AAA in a timely manner, Dr. Held may file a motion with the  
28 Court pursuant to both CCP §1021.5 and this settlement agreement to recover additional attorney  
fees and costs incurred as set forth in this paragraph. In the event M.Z. Berger submits the matter to  
arbitration, Dr. Held may seek, pursuant to CCP §1021.5, reasonable attorney fees and costs  
incurred for the arbitration.

1       **5.     RELEASE OF ALL CLAIMS**

2               **5.1     Dr. Held’s Release of M.Z. Berger**

3               In further consideration of the promises and agreements herein contained, and for the  
4     payments to be made pursuant to Sections 3 and 4, Dr. Held on behalf of himself, his past and  
5     current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the  
6     general public, hereby waives all rights to institute or participate in, directly or indirectly, any form  
7     of legal action and releases all claims, including, without limitation, all actions, and causes of  
8     action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties,  
9     losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys’ fees)  
10    of any nature whatsoever, whether known or unknown, fixed or contingent (collectively “claims”),  
11    against M.Z. Berger and each of its downstream wholesalers, licensors, licensees, auctioneers,  
12    retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate  
13    affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives,  
14    shareholders, agents, and employees, and sister and parent entities (collectively “Releasees”) that  
15    arise under Proposition 65, as such claims relate to M.Z. Berger’s alleged failure to warn about  
16    exposures to the Listed Chemical contained in the Products.

17              The parties further understand and agree that this release shall not extend upstream to any  
18    entities that manufactured the Products or any component parts thereof, or any distributors or  
19    suppliers who sold the Products or any component parts thereof to M.Z. Berger.

20              **5.2     M.Z. Berger’s Release of Dr. Held**

21              M.Z. Berger waives any and all claims against Dr. Held, his attorneys, and other  
22    representatives for any and all actions taken or statements made (or those that could have been  
23    taken or made) by Dr. Held and his attorneys and other representatives, whether in the course of  
24    investigating claims or otherwise seeking enforcement of Proposition 65 against them in this matter,  
25    and/or with respect to the Products.

26       **6.     COURT APPROVAL**

27              This Consent Judgment is not effective until it is approved and entered by the court and  
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1 shall be null and void if, for any reason, it is not approved and entered by the court within six  
2 months after it has been fully executed by all parties. In the event that this Consent Judgment is (a)  
3 not entered by this Court for any reason whatsoever, or (b) is entered by the Court and subsequently  
4 overturned by any appellate court, any monies that have been provided to Plaintiff, or his counsel  
5 pursuant to Section 3 and/or Section 4 above, together with interest at the prevailing federal funds  
6 rate accruing from the date of payment by Defendant, shall be refunded within fifteen days of the  
7 written demand by Defendant for return of such funds.

8 **7. SEVERABILITY**

9 If, subsequent to the execution of this Consent Judgment, any of the provisions of this  
10 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable  
11 provisions remaining shall not be adversely affected.

12 **8. GOVERNING LAW**

13 The terms of this Consent Judgment shall be governed by the laws of the State of California  
14 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise  
15 rendered inapplicable by reason of law generally, or as to the Products, then M.Z. Berger shall  
16 provide written notice to Dr. Held of any asserted change in the law, and shall have no further  
17 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products  
18 are so affected.

19 **9. NOTICES**

20 Unless specified herein, all correspondence and notices required to be provided pursuant to  
21 this consent judgment shall be in writing and personally delivered or sent by: (i) first-class,  
22 (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the  
23 other party at the following addresses:

24 To M.Z. Berger:

25 Joseph Mermelstein, President  
26 M.Z. BERGER & COMPANY, INC.  
27 29-76 Northern Boulevard, 4<sup>th</sup> Floor  
28 Long Island City, New York 11101

1 With copy to:

2 Michael J. Stiles, Esq.  
3 JEFFER, MANGELS, BUTLER & MARMARO LLP  
4 1900 Avenue of the Stars, Seventh Floor  
5 Los Angeles, California 90067

6 To Dr. Held:

7 Proposition 65 Coordinator  
8 HIRST & CHANLER LLP  
9 2560 Ninth Street  
10 Parker Plaza, Suite 214  
11 Berkeley, CA 94710-2565

12 Any party, from time to time, may specify in writing to the other party a change of address  
13 to which all notices and other communications shall be sent.

14 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

15 This Consent Judgment may be executed in counterparts and by facsimile, each of which  
16 shall be deemed an original, and all of which, when taken together, shall constitute one and the  
17 same document.

18 **11. COMPLIANCE WITH HEALTH & SAFETY CODE §25249.7(f)**

19 Dr. Held agrees to comply with the reporting form requirements referenced in California  
20 Health & Safety Code §25249.7(f).

21 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

22 Dr. Held and M.Z. Berger agree to mutually employ their best efforts to support the entry of  
23 this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in  
24 a timely manner. The parties acknowledge that, pursuant to California Health & Safety Code  
25 §25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment.  
26 Accordingly, Plaintiff agrees to file a motion to approve the settlement.

27 **13. MODIFICATION**

28 This Consent Judgment may be modified only: (1) by written agreement of the Parties and  
upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion  
of any party and entry of a modified consent judgment by the Court. The Attorney General shall be

1 served with notice of any proposed modification to this Consent Judgment at least fifteen days in  
2 advance of its consideration by the Court.

3 **14. AUTHORIZATION**

4 The undersigned are authorized to execute this Consent Judgment on behalf of their  
5 respective parties and have read, understood, and agree to all of the terms and conditions of this  
6 Consent Judgment.

<p>8 AGREED TO: 9 Date: <u>7/1/2008</u> 10 <i>Anthony E. Held</i> 11 By: _____ 12 Plaintiff, ANTHONY E. HELD, Ph.D., P.E.</p>	<p>8 AGREED TO: 9 Date: _____ 10 _____ 11 By: _____ 12 Defendant, M.Z. BERGER &amp; COMPANY, INC.</p>
<p>13 APPROVED AS TO FORM: 14 Date: <u>July 1, 2008</u> 15 <u>HIRST &amp; CHANLER LLP</u> 16 _____ 17 By: <i>[Signature]</i> 18 David Lavine 19 Attorneys for Plaintiff 20 ANTHONY E. HELD, Ph.D., P.E.</p>	<p>13 APPROVED AS TO FORM: 14 Date: _____ 15 <u>JEFFER, MANGELS, BUTLER &amp;</u> 16 <u>MARMARO LLP</u> 17 _____ 18 By: _____ 19 Michael J. Stiles 20 Attorneys for Defendant M.Z. BERGER &amp; COMPANY, INC.</p>

21 **IT IS SO ORDERED.**

22 Date: \_\_\_\_\_

23 JUDGE OF THE SUPERIOR COURT

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served with notice of any proposed modification to this Consent Judgment at least fifteen days in advance of its consideration by the Court.

**14. AUTHORIZATION**

The undersigned are authorized to execute this Consent Judgment on behalf of their respective parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO: Date: _____ By: _____ Plaintiff, ANTHONY E. HELD, Ph.D., P.E.	AGREED TO: Date: <u>7/2/2008</u> By: <u>[Signature]</u> Defendant, M.Z. BERGER & COMPANY, INC.
APPROVED AS TO FORM: Date: _____ HIRST & CHANLER LLP By: _____ David Lavine Attorneys for Plaintiff ANTHONY E. HELD, Ph.D., P.E.	APPROVED AS TO FORM: Date: _____ JEFFER, MANGELS, BUTLER & MARMARO LLP By: _____ Michael J. Stiles Attorneys for Defendant M.Z. BERGER & COMPANY, INC.

**IT IS SO ORDERED.**

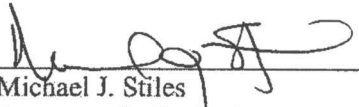
Date: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

1 served with notice of any proposed modification to this Consent Judgment at least fifteen days in  
2 advance of its consideration by the Court.

3 **14. AUTHORIZATION**

4 The undersigned are authorized to execute this Consent Judgment on behalf of their  
5 respective parties and have read, understood, and agree to all of the terms and conditions of this  
6 Consent Judgment.

8 9 10 11 12	AGREED TO: Date: _____ By: _____ Plaintiff, ANTHONY E. HELD, Ph.D., P.E.	AGREED TO: Date: _____ By: _____ Defendant, M.Z. BERGER & COMPANY, INC.
13 14 15 16 17 18 19	APPROVED AS TO FORM: Date: _____ HIRST & CHANLER LLP By: _____ David Lavine Attorneys for Plaintiff ANTHONY E. HELD, Ph.D., P.E.	APPROVED AS TO FORM: Date: <u>July 1, 2008</u> JEFFER, MANGELS, BUTLER & MARMARO LLP By:  Michael J. Stiles Attorneys for Defendant M.Z. BERGER & COMPANY, INC.

20  
21 **IT IS SO ORDERED.**

22 Date: \_\_\_\_\_

23 \_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT